IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 239 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NANDKISHORE S PUROHIT - Petitioner(s)

Versus

MUNICIPAL CORPORATION OF AHMEDABAD - Respondent(s)

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Appearance :

MR CHETAN K PANDYA for Petitioner No(s).: 1.

Mr. Shukla for M/s. NANAVATI &NANAVATI for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 07/07/2005

ORAL JUDGMENT

1. By filing this petition under Articles 226 and 227 of the Constitution, the petitioner seeks to challenge the order dated 23.12.2002 recorded below application Ex.57 in Civil Suit No. 3271 of 2000 by the learned Auxiliary Chamber Judge, City

Civil Court, Ahmedabad by which the application filed by the petitioner to implead B.D. Dikshit, Inquiry Officer appointed by the respondent Corporation as defendant in the suit, came to be rejected.

2. The petitioner filed the Civil Suit No.3271 of 2000 before the City Civil Court, Ahmedabad inter-alia challenging the appointment of B.D. Dikshit as Inquiry Officer as according to him the same is contrary to law. In the said suit, the petitioner filed application Ex.57 for joining B.D. Dikshit, Inquiry Officer as defendant No.2 in view of the allegation of bias alleged against him in the plaint as in absence of B.D. Dikshit in suit proceedings such allegation of bias may not be considered by the Court.

3. The Auxiliary Chamber Judge, City Civil Court, Ahmedabad, was pleased to reject the application Ex.57 by the impugned order which has given rise to the present petition at the instance of the original plaintiff.

4. Having heard Mr. C.K. Pandya, learned advocate for the petitioner and Mr. Shukla, learned advocate for M/s. Nanavati &Nanavati for the respondent, Ahmedabad Municipal Corporation and having perused the impugned order, it is seen that reading the plaint as a whole, no other allegations are made against B.D. Dikshit. Therefore, the trial court held that B.D. Dikshit is not a necessary party. It has also been held that the petitioner has made vague and indefinite allegations as the petitioner has made allegations that retired employee of the Ahmedabad Municipal corporation cannot be appointed as Inquiry officer. If the petitioner, during the course of the trial of Civil Suit No.3271 of 2000, would be able to convince the Court that on the basis of the Rules framed by the Ahmedabad Municipal Corporation a retired employee cannot be appointed as an Inquiry officer, the trial court would definitely look into the same and decide the same in accordance with law.

5. It be noted that though this petition is filed under Articles 226 and 227 of the Constitution of India, in fact this is a petition filed under Article 227 of the Constitution of India as the order impugned in this petition is an intrelocutory order. This Court is fortified in aforesaid view by the decision of the Supreme court in the case of Sadhna Lodh v. National Insurance Company Limited, (2003) 3 SCC 524. In the said reported decision, the Supreme Court has held that the petition cannot lie under Article 226 of the Constitution but it would lie under Article 227 of the Constitution against the interlocutory order.

1. In the case of **Ouseph Mathai and others v. M. Abdul Khadir,**(2002) 1 SCC 319, the Supreme Court has held that the petition filed under Article 227 of the Constitution of India cannot be treated like an extension of a statutory appeal or revision.

2. It is settled principle of law that the powers vested in the Court under Article 227 of the Constitution is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the Courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate

preliminary or perceptive facts found by the fact finding authority under the statute. The aforesaid proposition of law is laid down by the Supreme Court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim and others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557, (iii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra v. Milind and others (2000) 1 SCC 4.

3. In view of the foregoing discussion, according to this Court, no infirmity or illegality, much less jurisdictional error has been committed by the learned Judge in passing the impugned order requiring interference of this Court in this petition which is filed under Article 227 of the Constitution of India. Therefore, the petition lacks merit and deserves to be rejected.

4. For the foregoings reasons the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged.

(A.M. Kapadia, J.)

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